

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN GASCA E. DE LOS M.,

Plaintiff,

Case No. 22-10978

v.

HON. MARK A. GOLDSMITH

FEDERAL BUREAU OF INVESTIGATION, et al.,

Defendants.

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ORDER

(1) ACCEPTING THE RECOMMENDATION CONTAINED IN THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION DATED JANUARY 18, 2023 (Dkt. 15), (2) GRANTING DEFENDANT DANA NESSEL’S MOTION TO DISMISS (Dkt. 6), (3) DISMISSING CASE AGAINST THE STATE OF MICHIGAN WITH PREJUDICE, (4) GRANTING DEFENDANT FEDERAL BUREAU OF INVESTIGATION’S MOTION TO DISMISS (Dkt. 12), AND (5) DISMISSING CASE AGAINST FEDERAL BUREAU OF INVESTIGATION WITHOUT PREJUDICE

This matter is presently before the Court on the Report and Recommendation (R&R) of Magistrate Judge Jonathan Grey issued on January 18, 2023. In the R&R, the Magistrate Judge recommends that the Court grant Defendant Dana Nessel’s motion to dismiss (Dkt. 6), dismiss Plaintiff Benjamin Gasca E. de los M.’s claims against the State of Michigan with prejudice, grant Defendant Federal Bureau of Investigation’s (FBI’s) motion to dismiss (Dkt. 12), and dismiss Plaintiff’s claims against the FBI without prejudice.

The parties have not filed objections to the R&R, and the time to do so has expired. See Fed. R. Civ. P. 72(b)(2). The failure to file a timely objection to an R&R constitutes a waiver of the right to further judicial review. See Thomas v. Arn, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those

findings.”); Smith v. Detroit Fed’n of Teachers, 829 F.2d 1370, 1373-1374 (6th Cir. 1987) (failure to file objection to R&R “waived subsequent review of the matter”); Cephas v. Nash, 328 F.3d 98, 108 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.”); Lardie v. Birkett, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (“As to the parts of the report and recommendation to which no party has objected, the Court need not conduct a review by any standard.”). However, there is some authority that a district court is required to review the R&R for clear error. See Fed. R. Civ. P. 72 Advisory Committee Note Subdivision (b) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). Therefore, the Court has reviewed the R&R for clear error. On the face of the record, the Court finds no clear error and accepts the recommendation.

Accordingly, the Court grants Defendant Dana Nessel’s motion to dismiss (Dkt. 6), dismisses Plaintiff’s claims against the State of Michigan with prejudice, grants Defendant FBI’s motion to dismiss (Dkt. 12), and dismisses Plaintiff’s claims against the FBI without prejudice.

SO ORDERED.

Dated: February 8, 2023
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge